

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ORIGINAL

Petition of Bell Atlantic Corporation)	
for Relief from Barriers to Deployment)	CC Docket No. 98-11
of Advanced Telecommunications Services)	
)	
)	
Petition of U S West for Relief from)	
Barriers to Deployment of Advanced)	CC Docket No. 98-26
Telecommunications Services)	
)	
)	
Petition of Ameritech Corporation)	
to Remove Barriers to Investment in)	CC Docket No. 98-32
Advanced Telecommunications Capability)	

COMMENTS OF OMNIPOINT COMMUNICATIONS INC.

Omnipoint Communications Inc. ("Omnipoint")¹, by its attorneys, hereby responds to the Commission's Request for Comments² on the above-captioned Petitions (the "Petitions") filed by several Bell Operating Companies ("BOCs") requesting forbearance from certain provisions of the Communication Act of 1934, as amended (the "Act"), that the BOCs contend act as barriers

¹ Omnipoint Communications Inc. currently offers broadband PCS service on Block A in the New York MTA. Omnipoint affiliates currently hold broadband PCS licenses to serve markets throughout the United States, covering a population of approximately 96.5 million. All of Omnipoint's customers are currently able to access the internet through their handsets. Each telephone number is equipped with an internet address, and customers can both send and receive messages through their handsets

² Commission Seeks Comment On Bell Atlantic Petition For Relief From Barriers To Deployment of Advanced Telecommunications Services, Public Notice, CC Docket No. 98-11, DA 98-184 (rel. Jan. 30, 1998); Commission Seeks Comment of U S West Petition For Relief From Barriers to Deployment of Advanced Telecommunications Services, Public Notice, CC Docket No. 98-26, DA 98-469 (rel. Mar. 6, 1998); Commission Seeks Comment on Ameritech Petition For Relief From Barriers to Deployment of Advanced Telecommunications Services, Public Notice, CC Docket No. 98-32, DA 98-470 (rel. Mar. 6, 1998).

to the deployment of advanced telecommunications services.³ In their Petitions, the BOCs request Commission authority to deploy advanced telecommunications networks without regard to present local access and transport area ("LATA") boundaries, so that the BOCs may provide high-speed, packet-switched data services free from the pricing, unbundling, and separations restrictions designed for voice calls. These Petitions should be denied.

I. The BOCs Should Not Be Permitted To Deploy InterLATA Facilities Under the Guise of "Advanced Telecommunications Networks."

The BOCs are currently restricted from providing facilities or services across LATA boundaries without prior Commission approval under Section 271 of the Act.⁴ Last year, the BOCs argued to circumvent the interLATA restrictions by claiming that Section 272(e)(4) of the Act permitted them to provide interLATA services directly, and did not require the Commission to perform a Section 271 analysis. Both the Commission⁵ and the D.C. Court of Appeals⁶ found that Section 271 requires the BOCs to receive Commission approval prior to providing interLATA facilities or services under Section 272(e)(4) of the Act. The Commission found that it had to "preserve the carefully crafted statutory balance to the extent possible until facilities-based alternatives to the local exchange and exchange access services of the BOCs make the [Section 272] safeguards no longer necessary."⁷ The Commission held that the BOCs would

³ Section 706(b) of the Telecommunications Act of 1996 defines advanced telecommunications as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."

⁴ 47 U.S.C. § 271(b)(1).

⁵ Implementation of The Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Second Order on Reconsideration, 12 FCC Rcd. 8653, ¶11 (1997) ("Second Order").

⁶ Bell Atlantic Telephone Companies, et al. v. FCC, 131 F.3d 1044 (1997).

⁷ Second Order at ¶ 10.

have to receive Section 271 authority before they could provide services on an end-to-end physically integrated basis.⁸

Now, less than one year later, the BOCs are back before the Commission requesting forbearance from the interLATA and separate affiliate requirements of Sections 271 and 272 of the Act, pursuant to Section 706 of the Telecommunications Act of 1996. Section 706 permits the Commission to encourage the deployment of advanced telecommunications capabilities to all Americans by utilizing, among other things, regulatory forbearance and measures that promote competition in the local telecommunications market.⁹ Omnipoint respectfully submits that this is just one more attempt by the BOCs to prematurely shed the statutory requirements of Sections 271 and 272 in order to provide interLATA facilities and service without opening their own local markets to competition. Much like it did in the Second Order, the Commission should find that the BOCs must meet the statutory requirements of Sections 271 and 272 before they may deploy interLATA facilities and services under Section 706, or otherwise.

II. The Commission Must Ensure That If The BOCs Are Authorized To Provide InterLATA Facilities and Services, They Are Available To Competitive New Entrants.

If the Commission permits the BOCs to deploy advanced telecommunications networks that traverse LATA boundaries, Omnipoint respectfully submits that the BOCs should be required to provide high-capacity interoffice interLATA transport access (e.g., T1, T3, and SONET services) to all telecommunications carriers.¹⁰ A significant obstacle Omnipoint faces in its deployment of affordable wireless services is the ability to route traffic between its network

⁸ Second Order at ¶ 3.

⁹ Telecommunications Act of 1996, § 706.

¹⁰ Omnipoint has expressed this view in connection with the Commission's request for comments in the interpretation of Section 272(e)(4). See, "Comments Requested in Connection with Expedited Reconsideration of Interpretation of Section 272(e)(4)," Public Notice, CC Dkt. No. 96-149, DA 97-666 (rel. Apr. 3, 1997).

points (e.g., antenna sites and mobile handsets) directly serving its customer's equipment and Omnipoint's switch center.¹¹ The presence or lack of efficient transport arrangements that a new entrant can procure in a given service area often dictates when to introduce service in a particular area, and whether deploying service is feasible at all. While both BOCs and interexchange carriers provide some high-capacity private line transport, the market inadequately serves existing telecommunications carriers and it will stifle new entrants as well.

While there are currently a large number of interexchange carriers operating in the U.S., only a small percentage of these carriers own their own facilities. Those facilities-based interexchange carriers offering the type of access requested by Omnipoint do so at a prohibitive price.¹² Because of the rapid growth of the Internet and the number of new entrants in the market, much needed in-region, interLATA facilities are becoming too difficult and too expensive to obtain. If the BOCs are allowed into this market, they would be expected to build new interconnecting facilities across the LATA boundaries. As a result of the increased facilities-based competition, more cost-effective alternatives would be available to competitive telecommunications carriers at lower prices.

To further enhance the competitive benefits, if the BOCs are granted authority to construct and operate an interLATA network, any new facilities should be offered in accordance

¹¹ An example from Omnipoint's own build-out demonstrates the extent of the inefficiencies faced in the market by competitive providers. Omnipoint is the holder of broadband PCS licenses for both the Philadelphia, PA and Atlantic City, NJ markets. Philadelphia is the nearest feasible switch center for the traffic that will be generated by Omnipoint's future customers in the Atlantic City market. Because there are two LATAs (the Camden, NJ LATA and the Atlantic City, NJ LATA) separating the Omnipoint base station from the switch, Omnipoint is forced to use IXC transport instead of end-to-end transport from Bell Atlantic. Because there are few IXCs offering such service, Omnipoint is forced to pay more than it would otherwise have to if Bell Atlantic had an existing network in place linking these two areas.

¹² For example, Omnipoint has recently attempted to obtain private lines between Detroit and Grand Rapids, Michigan. Omnipoint received a quote from a facilities-based interexchange carrier, AT&T, of approximately \$40,000 per DS-3 circuit. A reseller of these facilities, GTE, was able to offer DS-3's to Omnipoint for approximately \$6500.

with that BOC's current tariffed rates, terms, and conditions. In the specific case of Bell Atlantic, and its recent acquisition, NYNEX, which continue to maintain separate and distinct federal access tariffs, unification of such tariff structures and rates should also be required for all interstate services allowed as a result of its Petition.

Allowing competing telecommunications carriers access to a BOC's interLATA network would allow meaningful competition to grow and flourish in the local exchange and wireless markets. In 1996, Congress recognized that competitive providers would most likely need to obtain facilities from the incumbent providers.¹³ The Commission has likewise found that access to interoffice facilities will speed competition into the market.¹⁴ Omnipoint's ability to compete in the local markets would be greatly helped if the BOCs were required to open their interLATA networks to competition and, in addition, Omnipoint would be better able to offer services in rural areas if, as the BOCs claim and Section 706 requires, their networks will provide advanced telecommunications to all Americans.

¹³ Joint Explanatory Statement, S. Rep. No. 458, 104th Cong., 2d Sess. at 148.

¹⁴ Implementation for Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Dkt. No. 96-98, 11 FCC Rcd. 15499 at ¶ 440-445 (1996), *rev'd on other grounds*, Iowa Util. Bd. v. FCC, 120 F.3d 753 (8th Cir., 1997).

III. Conclusion

Based on the foregoing, Omnipoint respectfully submits that any Commission decision to permit the BOCs to provide service and facilities across LATA boundaries should come with the requirement that the BOCs provide high-capacity interoffice, interLATA transport access to all telecommunications carriers.

Respectfully submitted,

OMNIPOINT COMMUNICATIONS INC.

By:



Mark J. Tauber

Teresa S. Werner

Piper & Marbury L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036
(202) 861-3900

Its Attorneys

Date: April 6, 1998